A Research Proposal of Ph.D. Thesis Entitled

Evaluating the Collegium System in India: Impacts, Challenges & Reform Suggestions

Submitted to the

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In

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By

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Introduction

The Collegium System in India, which governs the appointment and transfer of judges in the higher judiciary, has sparked extensive debate regarding its transparency, accountability, and effectiveness. This research aims to critically evaluate the Collegium System, focusing on its historical evolution, operational mechanisms, and socio-legal implications. The proposed study will analyze the merits and demerits of the system, investigate its impact on judicial independence, and suggest possible reforms to enhance its efficacy.

The Collegium System was established by the Supreme Court through judicial pronouncements starting in the 1990s, primarily through the cases of Supreme Court Advocates-on-Record Association vs. Union of India (1993) and Second Judges Case (1993). This system allows for judges of the Supreme Court and High Courts to recommend appointments and transfers, thereby centralizing power. However, critics argue that this lack of a transparent process leads to issues such as nepotism and favoritism.

Objectives:

1. To provide a comprehensive historical analysis of the Collegium System.
2. To compare the Collegium System with judicial appointment processes in selected countries.
3. To assess the impact of the system on judicial independence and accountability.
4. To make evidence-based recommendations for reforms in the Collegium System.

Research Problem

1. What are the historical developments that lead to the establishment of the Collegium System in India?
2. How does the Collegium System compare with judicial appointment systems in other democracies?
3. What are the impacts of the Collegium System on judicial accountability and independence?
4. What challenges does the Collegium System face, and what reforms could address these challenges?

Hypothesis

1. The present constitutional framework is not adequate to bring transparency in appointment of Judges.

2. The existing Collegium Systems being criticized from all aspects and needs reforms.

Theoretical Framework:

The research will be grounded in legal theory and governance frameworks, focusing on concepts of judicial independence, accountability, and the separation of powers.

Literature Review:

Previous studies, including those by scholars such as Upendra Baxi and Arun K. Tiwari, have critiqued the Collegium System, highlighting its lack of transparency and argument for more participatory processes. In contrast, proponents argue that it safeguards judicial independence.In 2023, from Andhra University, Department of Law - Mr. Murli Krishna. M has prepared thesis on Independence of Judiciary Constitutional and Legal perspective with reference to appointment of judges through Collegium.

Research Methodology

This study will employ a mixed-methods approach, combining qualitative and quantitative research methods.

1. Qualitative Analysis: In-depth interviews with legal experts, judges, and practicing lawyers; Content analysis of judicial appointment-related documents, including Supreme Court judgments and governmental policies.
2. Quantitative Analysis: Survey of legal professionals to gauge perceptions of the Collegium System; Statistical analysis of judicial performance metrics pre- and post-implementation of the Collegium System.

Data Sources

a. Supreme Court and High Court records;
b. Interviews with stakeholders, including judges, lawyers, and policymakers; and
c. Academic journals and legal commentaries.

Expected Contributions

This research will contribute to the discourse on judicial reforms in India by providing a nuanced understanding of the Collegium System. It aims to propose a balanced framework that promotes transparency while preserving judicial independence.

Timeline

1. Year 1: Literature review and theoretical framework development.
2. Year 2: Data collection through interviews and surveys.
3. Year 3: Data analysis and formulation of reform suggestions.
4. Year 4: Writing of the dissertation and dissemination of findings through conferences and publications.

Chapterisation:

Chapter – I Introduction

This chapter contain overall introduction and significance of the topic as well as problem statements; objectives undertaken; hypothesis; methodology used; review of research, etc.

Chapter – II Historical Perspective

This chapter contains study of Ancient India in historical perspective.

Ancient India:

As India has the oldest Judiciary in the world. In Mahabharta it was laid down "A king who after having sworn that he would protect his subjects and if he fails to do so, he should be executed like a mad dog". This seemed to be very similar to the rule of Law, this also indicated the Soveranity. History can be traced during Mauryan Empire, Kautilya describes the duties of king in Arthashastra. The great Jurist like Manu, Yajn-valkya, Katyayana, Brihaspati and others described in detail the judicial system which prevailed in ancient India.

Medieval India:

After the disintegration of Harsha Empire the history of India did not lift until the Mughal invasion. The ideal of justice under Islam was one of the highest in the middle ages. The administration of justice was regarded by the Muslim kings as religious duties. The medieval state in India throughout its existence witnessed autocracy. Under the Mughal Empire there was no system of Law and Justice, no organization of Law Courts, no proper distribution of Courts according to the proportion of population. On the other side, there was Panchayat System.

Modern India

The judicial system of today follows the hierarchy of Courts. After implementation of Constitution of India the Supreme Court was established as the Apex Court, the

High Courts were established in each state and lower Judiciary was functioning as a systematic judicial system. Independence of Judiciary, Rule of Law & Judicial Review became the hallmark of Democracy.

Chapter – III International Legal Framework

This chapter contain the study on the International Court of Justice and known Countries in the world in regard to available mechanism to appoint judges of the apex court will be thoroughly investigated. ICJ is the principal organ of the United Nations. It was established in June 1945 by the charter of United Nations and began to work in 1946. The headquarters of ICJ is situated in Hague, Netherlands. ICJ is made up of 15 Judges. It has mainly two functions.

a. Settle legal disputes between states in accordance with international law.
b. Provide advisory opinion on Legal Questions.

Chapter – IV Collegium System- Indian Legal Framework

This chapter contains study on Statutory as well as Constitutional Legal Framework with regard to appointment of judges in apes and High Courts in India**:**

1. Structure of Collegium **:** The Collegium is led by the Chief Justice of India and four other senior most Judges from Supreme Court. For High Courts the Collegium is led by the Chief Justice of High Court and two other senior most Judges from High Court.
2. Role of Collegium: The Collegium System in India include Recommending appointments, Recommending transfers, Considering seniority, Considering inclusion.
3. Functions of Collegium System**:** The Collegium System in India is a committee of Judges that recommends the appointment and transfer of Judges in Supreme Court and High Court.

Chapter- V- Judicial Approach

The Collegium System in India is not explicitly mentioned in the Constitution but it has evolved through Supreme Court Judgements. There is no such Law or Constitutional provisions that defines the Collegium System. Article 124 (2) of the Constitution deals with appointment of Supreme Court Judges. Article 217 (1) deals with the appointment of High Court Judges. The three judgements which are contributing for evolution of Collegium System.

1. First Judge's Case- S.P Gupta v.s Union of India (1981)
2. Second Judge's Case- Supreme Court Advocates on Record Association v.s Unions of India (1998)
3. Third Judges Case- In re: Special Reference Case 1 of 1998

Chapter- VI Conclusion & Suggestions

Conclusion: The Collegium System has been victimized in recent times. Independence of Judiciary which includes Supreme Court, High Court and Subordinate Courts is hallmark of democracy and mandate of Indian Constitution but the questions which have been raised through arguments and debates on the system of appointment of Judges is a very disturbing concern and so we should unveil the mechanism followed by the Collegium to bring more transparency. The Collegium System embodies a critical aspect of judicial governance in India. The research will aim to simplify the complexities, provide empirical analysis and contribute to reforms in policy discussions to uphold the integrity and independence of Judiciary in India.

Suggestions:

1. Increase transparency
2. Involve more stakeholders
3. Promote diversity
4. Develop clear appointment standards

5. Accountability to be strengthened.
6. Create a Cadre for retired Judges, etc.

References:

1. Books- "The Constitution Of India: A Commentary" by M.P. Jain
   "The Supreme Court On Trial: A Report on the Judiciary" by M.P Singh.
2. Articles by Legal Scholas in Law reviews and journals.
3. Research papers published in Legal journals.
4. Law blogs and platforms like LiveLaw, Bar & Bench and SCObserver often discuss the Collegium System and related current issues.
5. Supreme Court judgements.

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